

7 Official Opinions of the Compliance Board 83 (2011)

**Minutes – Review and approval of draft minutes by public
body – Public access to minutes**

January 10, 2011

Mr. Gary E. Coldsmith

The complaint relates to a hearing held by the Board of Appeals for the Town of Chesapeake Beach on September 7, 2010. There appears to be no dispute that the meeting was subject to the Open Meetings Act. The Board of Appeals conducted the hearing as an open meeting, except for a brief closed session to consult with its counsel on a legal issue. The complaint concerns the minutes – or lack thereof – for that meeting.

We conclude that the Board of Appeals violated the Act in failing to have minutes approved by the Board that are publicly accessible. We note that the Board of Appeals has indicated that it will soon consider the adoption of new procedures that will avoid future violations.

I

Complaint and Response

The complaint alleged that no minutes of the September 7, 2010 meeting, including its closed portion, were made available to the public. The complainant did not indicate when, or under what circumstances, he made a request to review the minutes. The response by the Board of Appeals stated that the complainant inquired about the minutes of the September 7 meeting at the next meeting of the Board of Appeals in October 2010. At that time, the Secretary of the Board of Appeals stated that, because that Board does not approve its minutes, minutes for a prior meeting are not typically set out for the public at a subsequent meeting. The Board of Appeals' response also suggests that the complainant did not clearly request access to the minutes.

In the response to the complaint, counsel for the Board of Appeals stated that its practice was likely to change in the near future. She indicated that new rules of procedure will likely require that draft minutes be placed on the agenda of the immediately subsequent meeting for approval and, upon approval, be made available to the public.

II

Access to Minutes

The Open Meetings Act requires that minutes be prepared for a meeting governed by the Act. §10-509. The minutes are to include at least the information set out in §10-509(c). As we have held on a number of occasions, draft minutes that are not reviewed and approved by the public body do not satisfy this requirement. “As a legal matter, the ‘minutes *of a public body*’ become such only after the public body itself has had an opportunity to review and correct the work of whoever prepared the draft minutes. 2 *OMCB Opinions* 11, 13 (1998) (emphasis in original); *see also* 6 *OMCB Opinions* 187, 190 (2009); 3 *OMCB Opinions* 303, 306 (2003). Once draft minutes are adopted by a public body, they are to be open to public inspection during regular business hours. §10-509(d).

There appears to be no dispute that the Board of Appeals never reviewed or approved the draft minutes of the September 7, 2010 meeting. Thus, whether or not the complainant clearly requested access to the minutes, the draft that existed did not satisfy the requirements of the Act. We believe that the anticipated change in the Board’s procedures concerning its minutes will help clarify the status and availability of its minutes to the public.

III

Conclusion

The Board of Appeals violated the Open Meetings Act in that it did not consider and approve minutes for its September 7, 2010 meeting. The anticipated change in the Board’s procedures concerning its minutes should help ensure compliance in the future.

OPEN MEETINGS COMPLIANCE BOARD

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